

CLERK'S COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
at Santa Fe, NM

APR 28 2000

ROBERT M. MARCH, Clerk
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

KEITH RUSSELL JUDD,

Applicant,

v.

No. CIV-00-0430 MV/KBM

ROYAL FURGESON, U.S. DISTRICT JUDGE,
U.S. DISTRICT COURT FOR WESTERN DISTRICT OF TEXAS,
MARK T. ROOMBERG, ASS'T U.S. ATTORNEY
FOR WESTERN DISTRICT OF TEXAS,
KAREN Y. COREY-STEELE,
STEVEN FRENCH, FBI AGENT FOR MIDLAND, TEXAS,
CAROLYN DINEEN KING, CHIEF JUDGE USCA 5TH CIRCUIT,
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT,
BANK OF AMERICA, DALLAS, TEXAS,
MIDLAND COUNTY JAIL,
ALBUQUERQUE TITLE CO. INC.,
ORLANDO VIGIL, BERNALILLO COUNTY TREASURER,
CITY OF ALBUQUERQUE,

Respondents.

MEMORANDUM OPINION AND ORDER

This matter is before the Court *sua sponte* for preliminary review of Applicant's application for writ of habeas corpus under 28 U.S.C. § 2241 and complaint for damages and return of property (the "application" or "complaint"). Applicant is incarcerated, appears pro se, and has moved for leave to proceed in forma pauperis ("IFP") (Doc. #2). The IFP motion will be granted, and, for the reasons below, the application will be dismissed.

The Court of Appeals for the Tenth Circuit recently noted Applicant's "lengthy and abusive filing history in both the district court and this court." *Judd v. University of New Mexico*, --- F.3d ---, No. 99-2008, 2000 WL 303361, at *2 (10th Cir. March 22, 2000). The application alleges that

Applicant, who is “bipolar,” is the trustee of his disabled mother’s retirement trust. A check made out to Applicant that included funds for his presidential campaign was deposited by Defendant Midland County Jail without Applicant’s signature. Applicant does not identify the owner of the account where the check was deposited. He further alleges that property taxes on parcels in Albuquerque have been “removed” for more than three years. His mother is hospitalized for a broken hip suffered when someone pushed her down at her retirement center. Applicant seeks immediate release, return of the money for medical care of his mother, return of the property taxes, and \$444 billion in damages.

The application for writ of habeas corpus must be dismissed for lack of jurisdiction. As stated by The Court of Appeals for the Tenth Circuit, a district court does not have jurisdiction of an application under § 2241 unless the applicant is confined in the same district. *United States v. Buck*, No. 99-2129, 1999 WL 811685, at **2 (10th Cir. Oct. 12, 1999); *Johnson v. Taylor*, 347 F.2d 365, 366 (10th Cir.1965) (A § 2241 petition “must be filed in the district where the petitioner is confined.”). Because Applicant does not attack his conviction, the application is properly brought under § 2241, *cf. Buck*, 1999 WL 811685, at **2 (distinguishing petitions under § 2241 and § 2255), and may not be prosecuted in this district.


Applicant’s complaint for damages and return of property will be dismissed with prejudice. “[T]he court shall dismiss the case at any time if . . . the action . . . seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §1915(e)(2)(B)(iii). Plaintiff’s complaint seeks damages from, *inter alia*, a United States District Judge, a Fifth Circuit Court of Appeals Judge, and an Assistant United States Attorney. These Defendants are immune from suits for damages, *Wiggins v. New Mexico State Supreme Court Clerk*, 664 F.2d 812, 815 (10th Cir. 1981)

(citing *Stump v. Sparkman*, 435 U.S. 349 (1978); *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976), and Plaintiff's complaint, therefore, is frivolous. 28 U.S.C. §1915(e)(2)(B)(iii) and (g); cf. *McKinney v. Oklahoma Dep't of Human Services*, 925 F.2d 363, 366 (10th Cir. 1991) (affirming dismissal of claims against immune defendants as frivolous). The complaint for damages and return of property will be dismissed with prejudice.

IT IS THEREFORE ORDERED that Applicant's motion for leave to proceed in forma pauperis (Doc. #2) is GRANTED;

IT IS FURTHER ORDERED that Applicant's application for writ of habeas corpus under 28 U.S.C. § 2241 be DISMISSED without prejudice to Applicant's right to assert his claims in an appropriate forum;

IT IS FURTHER ORDERED that Applicant's complaint for damages and return of property be DISMISSED with prejudice as frivolous; a final order of dismissal will be entered in accordance with this opinion.


UNITED STATES DISTRICT JUDGE